IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1353

WILLIAM A. BURLESON,

Petitioner,

v.

ROBERT L. FRIEDLI, AUGUST WOLFF, and
JOSEPH J. PASTORE
Trading as Friedli, Wolff & Pastore,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Petitioner, William A. Burleson, respectfully prays that a writ of certiorari issue to review the judgment, District of Columbia Court of Appeals filed in this proceeding on November 21, 1975, and order denying petitioners request for reconsideration and hearing en banc, filed on December 23, 1975.

Petitioner is the Appellant-Defendant in the Proceeding below.

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OPINIONS BELOW

A. On November 21, 1975, a two member panel of the District of Columbia Court of Appeals, entered a judgment, without opinion, summarily affirming the order on appeal from the Superior Court of the District of Columbia. See App. No. 3a). The General Docket, D.C. Court of Appeals, entry dated November 21, 1975, reflects a judgment affirming order of the trial court without opinion [See App. No. 9a]. On December 23, 1975, a petition for hearing and reconsideration was denied. (See App. No. 2a). On June 20, 1975, Appellant's Suggestion For Certification of Question to Supreme Court of United States was denied. (See App. No. 5a).

1. The order on appeal was a praecipe signed by the trial judge and counsel for the Respondent. The praecipe was not signed by the Petitioner, nor did he receive notice of its existence until it was filed as an exhibit while the matter was on appeal. The praecipe was not file stamped, not included in the record below, represented facts which are not true, and the propriety of its existence was questioned in the Appellant Court. On June 10, 1975, the attorney for the appellee submitted a pleading to the D.C. Court of Appeals entitled, *Response of Appellees to Appellant's Opposition to Appellees' Reply to Appellant's Suggestion for Certification of Question to Supreme Court,* with the praecipe attached and marked as Exhibit A.

The praecipe, which is dated December 16, 1974, reads as follows: (See App. No. 13a):

BLEED THROUGH

"The clerk of said court will release to plaintiff's attorney the monies deposited into the Registry of the Court in the above-captioned case pursuant to the Settlement Agreement entered into on November 7, 1974, by consent of all counsel and the court."

/s/ JUDGE EDWARD A. BEARD /s/ WILLIAM R. KEARNEY, Esq.
Attorney for Plaintiffs

2. Money was deposited in the Registry of the Superior Court pursuant to court order dated June 28, 1974, and was deposited pending an adjudication of the legality and reasonableness of charges for copies of transcripts of depositions pursuant to Superior Court Civil Rule 30 (f)(2), adopted from the identical Federal Civil Rule 30(f)(2).

3. The praecipe refers to a "settlement agreement" between the parties which does not exist in law or fact and the "settlement agreement" bears no signatures indicating that it was ever agreed to by any party (See App. No. 11a). Petitioner states that the praecipe cannot be used in place of a court order, but was treated as such when the trial judge ordered the money turned over to the counsel for the Appellee.

4. On November 7, 1974, the trial judge made a decision on the amounts charged by the plaintiffs:

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> "The charges made by plaintiffs, (Private Shorthand Reporters), for preparation and delivery of copies of transcripts of depositions is a fair and reasonable one, competitive in the prevailing market and in accord with the pricing policies in effect in the area." (Appellee pays $0.05 for a 22 line copy page and sells it for $0.85.)

a. The Petitioner appealed from this decision and the trial judge filed a minute entry into the record stating that he had never made any findings of fact or conclusions of law.

JURISDICTION

Jurisdiction of this Court in invoked pursuant to Title 28, United States Code, Section 1257, as amended to July 29, 1970, Public Law 91-358, Title I, Section 172(a)(1), 84 Stat. 590. The JUDGMENT of the appellate court was entered November 21, 1975; and a petition for reconsideration and hearing en banc was timely filed, and denied December 23, 1975:

> "On consideration of appellant's petition for reconsideration and hearing en banc, it is
>
> ORDERED that appellant's aforesaid petition is denied."

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QUESTIONS PRESENTED

1. Did the proceedings below whereby the Petitioner was required to immediately assume his own defense in the middle of his direct testimony on the witness stand, without any opportunity for preparation, after having been excluded from earlier bench conferences and communications between judge and counsel; whereby a purported "settlement agreement" was dictated by the trial judge but never signed by either party; whereby the monies paid into the Court Registry were released pursuant to a praecipe, without a file stamp and referred to as an "order" and signed by the trial judge and counsel for the Plaintiff-Respondent, and of whose existence Petitioner did not learn until six months later; whereby certain prejudicial remarks were made by the trial judge both in and outside the presence of the jury; whereby the D.C. Court of Appeals summarily affirmed the "order" on appeal and refused Petitioner's request for reconsideration and hearing en banc, deny the Defendant-Petitioner the right to due process of law as guaranteed under the Fifth Amendment of the Constitution of the United States?

2. Was the trial court correct in its interpretation of Civil Rule 30(f)(2), in which the trial court found that reasonable charges for a copy of a party's deposition should be determined by competitive business practices in which the appellee (stenographer) payed $0.05 for a 22 line copy page and sold it for $0.85.

3. In the absence of any interpretation of Civil Rule 30 (f)(2), by any Federal Court, was the District of Columbia Court of Appeals correct in its denial of Appellant's Suggestion for Certification of Question to the United States Supreme Court in determining a reasonable charge for a copy of a deposition as provided in Federal Rules of Civil Procedure 30(f)(2) and the identical District of Columbia Superior Court Civil Rule 30(f)(2)?

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4. Was the Appellant Court correct in finding that the trial court issued an order, that Petitioner appealed from an order, and in summarily affirming that order on appeal?

STATUTES INVOLVED

FIFTH AMENDMENT, U.S. Constitution:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law . . . ."

28 U.S. Code, Section 1257-(3):

> By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

RULES INVOLVED

Supreme Court Rules 19 (1) (a) 20, 28.
Federal Rules of Civil Procedure 30(f)(2), and the identical, Superior Court Rules of Civil Procedure 30(f)(2) state:

> *Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.*

STATEMENT OF THE CASE

On February 15, 1974, the Respondents, (a private stenographer association), filed a small claims debt action against the Petitioner, (an attorney), demanding money for payment of second copies of transcripts furnished Plaintiffs' clients, whose cases were being litigated, and who had been deposed by their adversaries, the contractors of the Respondents.

The Petitioner obtained counsel who filed a defense and counterclaim and asked for trial by jury. During the course of these proceedings, some of Petitioners' clients' cases were being adjudicated, and by formal motion Petitioner's counsel moved to deposit those sums alleged to be owed to Respondent, into the Registry of the Court, pending adjudication and determination as to the legality and reasonableness of Petitioners' charges pursuant to D.C. Superior Court Rule 30(f)(2). The Respondent did not object to the motion and a Superior Court judge granted it on June 28, 1974. Money is still being deposited into the Court Registry pending a final adjudication.

Retained counsel (no. 14a of appendix) represented the Petitioner for two and a half years in this lengthy and complex case. The trial commenced on November 5, 1974, and on Friday, November 7, 1974, Petitioners' counsel, during his direct examination of the Petitioner, withdrew his representation of the Petitioner, alleging that the behavior of the trial judge had destroyed his effectiveness in front of the jury. The trial judge had previously ruled that the Petitioner not act as his counsel and prohibited petitioner from being present at bench conferences and communications between judge and counsel.

The Petitioner was unprepared to assume the responsibility of representing himself before the jury and requested a continuance, which was denied. Defendant-Petitioner was required to immediately resume the stand and examine himself. Counsel for Respondent objected to the withdrawal of counsel for the Defendant stating that it was unethical for a Defendant lawyer to handle his own case when he had to take the stand. At 12:40 P.M. of the same day, the court recessed for lunch until 2:00 P.M. At 2:21 P.M., the court reconvened and the trial judge caused the court reporter not to put nine minutes of court proceedings in the record. The trial judge then dictated a "settlement agreement" into the record, and then told the counsel for Respondents and the Petitioner to initial the stenotape. The trial judge ordered the court reporter to type up a "settlement agreement," and for the Petitioner to report to the court reporter's office on Monday, November 10, 1974, for the purpose of signing the "settlement agreement." On November 10, 1974, Petitioner refused to sign the "settlement agreement", in that it did not conform to what had transpired in the court proceedings of November 7, 1974. The original steno-notes were not read back by the reporter, and the record reflects that nine minutes of these notes, which immediately preceded the "settlement agreement"; were missing. The trial judge did in fact make a decision, gave Petitioner ten days to prepare an order, would not set a supersedeas bond, and ruled the Petitioner would not be closed out from appealing his finding of reasonableness of charges for copies of depositions.

Accordingly, Petitioner did prepare a praecipe of dismissal and a proposed court order, which the trial judge refused to sign. The parties, including the trial judge, refused to sign the "settlement agreement", and for thirty days thereafter, the trial judge refused all motions to amend, clarify, re-hear, reconsider, or clear up the confusion.

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Throughout the course of the proceedings in the trial court, a circus-like atmosphere prevailed: the trial judge stated that Petitioners' clients were third graders and advised Petitioner to take the fifth amendment. He stated that this case was a bag of worms for years to come; he had made fifty-five errors for appeal; told the Petitioner not to use LSD, that the Petitioner could not get Eli Root or Earl Warren to represent him and the Petitioner was not signing on behalf of the Administration or Senator Mansfield. The trial judge stated the reporter committed omissions in the transcript, and asked him if he could transcribe accurate dictation. The trial judge criticized his reversal of a case before the Court of Appeals and said he would like to see one of them down here and do it. He told the Petitioner he would see an elephant roosting in a tree.

On December 5, 1974, the notice of appeal was filed with the District of Columbia Court of Appeals. On April 17, 1975, counsel for Petitioner filed a Motion for Extension of Time to File Appellant's Brief. On May 20, 1975, the Petitioner, through his attorney, and pursuant to Rule 28 of the United States Supreme Court, filed a Suggestion for Certification of Question to the Supreme Court in determining a reasonable charge for a copy of a deposition, as provided in FRCP 30(f)(2). Respondent's reply to Petitioner's Suggestion for Certification was filed on May 24, 1975. Petitioner's Opposition to Respondent's Reply was filed on June 2, 1975. On June 10, 1975, Respondent filed a Response of Appellee to Appellant's Opposition to Appellees' Reply to Appellant's Suggestion for Certification of Question to Supreme Court, with attached praecipe, marked as exhibit A, (No. 13a in Appendix). This response and praecipe filed by Respondent is not part of the General Docket, District of Columbia Court of Appeals. (See No. 7a, in Appendix) On June 20, 1975, Petitioner's Suggestion for Certification of Question to the Supreme Court was denied.

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On December 13, 1974, Petitioner informed the court that he intended to retain counsel to represent him in his appeal, and present counsel has represented the Petitioner during the pendency of this appeal (No. 10a of Appendix).

On September 2, 1975, Respondent filed its Motion for Summary Affirmance. The Motion was accompanied by an unsigned, undated "settlement agreement", also marked as Exhibit A (No. 11a, Appendix). On November 21, 1975, the Appellate Court, after consideration of Appellee's Motion for Summary Affirmance, affirmed the order on appeal. [The General Docket refers to the judgment affirming the order of the trial court without opinion.]

The Appellate Court did not acknowledge counsel for the Petitioner until he received a copy of a letter dated January 15, 1976, sent to the Clerk, Supreme Court of the United States, informing the Clerk that the Appellate Court intended to keep the record of these proceedings until requested by said Clerk.

REASONS FOR GRANTING THE WRIT

A. Petitioner has stated that not only was he denied due process of law and equal treatment under the law, but he felt that an assault was committed upon his integrity, his client's integrity, and the integrity of the judicial process, in which they sought relief.[1]

---

[1] *Snyder v. Mass., 291 U.S. 97 (1934), Page 105.* The Commonwealth of Massachusetts is free to regulate the procedure of its courts in accordance with its own conception of policy and fairness unless in so doing it offends some principle of justice so rooted in the traditions and conscious of our people as to be ranked as fundamental.

BLEED THROUGH

B. One of the questions presented to this Court concerns itself with the development of standards and criteria in the interpretation of Superior Court Civil Rule 30(f)(2), upon payment of reasonable charges therefore, the officer shall furnish a copy of the deposition to any party or to the deponent. Superior Court Civil Rule 30(f)(2) and Federal Civil Rule 30(f)(2) are identical and this Court is being called upon to establish standards and criteria effecting private stenographic court reporting. This Court's decision will have far reaching implications, and will result in the development of these standards and criteria as a precedent in jurisprudence.

C. The interpretation of this rule, which is identical to Federal Civil Rule 30(f)(2), has never been determined or ruled upon by the Supreme Court or any lower Federal Court. This absence of interpretation has resulted in a lack of uniformity for charges for copies of depositions.

D. Money is in the Registry of the Superior Court and additional sums are being deposited pending final interpretation of Civil Rule 30(f)(2), under which Respondents took approximately 4,000 depositions in our area courts in 1973.

CONCLUSION

For the reasons herein, the Petitioner asks that the Petition for a Writ of Certiorari to the District of Columbia Court of Appeals be granted.

Respectfully submitted,

Richard Arens,
Michael C. McGoings #193-185
Attorney for Petitioner
1000 Pennsylvania Ave., S.E.,
Washington, D.C. 20003

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APPENDIX

2a Order, District of Columbia Court of Appeals, denying Appellant's Petition for Reconsideration and Hearing En Banc, filed December 23, 1975.

3a Judgment, District of Columbia Court of Appeals, affirming Order on Appeal, filed November 21, 1975.

5a Order denying certification of question to Supreme Court, filed June 20, 1975.

7a General Docket, District of Columbia Court of Appeals, #9103.

10a Praecipe entering appearance of Attorney for Defendant, D.C. Court of Appeals.

11a Unsigned, undated, "settlement agreement".

13a Praecipe, Superior Court of the District of Columbia dated December 16, 1974, releasing to Plaintiff's Attorney the monies deposited into the Registry of the Court.

14a Praecipe entering appearance of attorney for defendant, D.C. Superior Court.

District of Columbia Court of Appeals

[Filed December 23, 1975]

No. 9103 January Term, 1975

* * * * *

O R D E R

On consideration of appellant's petition for reconsideration and hearing en banc, it is

ORDERED that appellant's aforesaid petition is denied.

PER CURIAM

Copies to:

Honorable Edward A. Beard
Judge, Superior Court of the District of Columbia

Clerk, Superior Court of the District of Columbia

William A. Burleson
1000 Pa. Ave., S.E.
Washington, D.C. 20003

William R. Kearney, Esquire
Morton N. Goldstein, Esquire
22 West Jefferson Street
Rockville, MD 20850

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DISTRICT OF COLUMBIA
COURT OF APPEALS

[Filed November 21, 1975]

No. 9103

WILLIAM A. BURLESON,
Appellant,
v.
ROBERT L. FRIEDLE, *et al.*,
Appellees.

CA-4672-74

BEFORE: Kelly and Yeagley, Associate Judges.

JUDGMENT

This cause came on for consideration on appellees' motion for summary affirmance, the responsive pleadings filed with respect thereto, and the court having reviewed the record on appeal and appellant's brief filed herein, it is

ORDERED and ADJUDGED that the order on appeal herein is hereby affirmed.

PER CURIAM.

FOR THE COURT:

/s/ ALEXANDER L. STEVAS
Alexander L. Stevas, Clerk.

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Copies to:

Honorable Edward A. Beard
Judge, Superior Court of the District of Columbia.
Clerk, Superior Court of the District of Columbia.

William A. Burleson, Esquire
1000 Pennsylvania Avenue, S.E. 20003

Messrs, Kearney and Goldstein
22 West Jefferson St., Rockville, MD 20850

EXHIBIT #2

DISTRICT OF COLUMBIA
COURT OF APPEALS

[Filed June 20, 1975]

No. 9103

WILLIAM A. BURLESON,	:	
Appellant,	:	
v.	:	**CA-4672-72**
ROBERT L. FRIEDLI, *et al.,*	:	
Appellees.	:	

BEFORE: Reilly, Chief Judge and Yeagley, Associate Judge.

ORDER

On consideration of appellant's suggestion for certification of question to the Supreme Court and the responsive pleadings thereto, it is

ORDERED that the aforesaid suggestion be, and the same is hereby, denied.

Appellant shall cause his brief to be filed forty days from date of this order.

PER CURIAM.

Copies to:

Honorable Edward A. Beard
Judge, Superior Court of the District of Columbia.

Clerk, Superior Court of the District of Columbia.

William A. Burleson
1000 Penn. Ave., S.E. (3)
Appellant.

William R. Kearney, Esquire
Morton N. Goldstein, Esquire
22 West Jefferson Street
Rockville, MD 20850
Attorneys for Appellees.

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GENERAL DOCKET 9103

DISTRICT OF COLUMBIA
COURT OF APPEALS

* * * * *

12/27/74	Preliminary record
12/27/74	Motion of appellant for transmittal of original papers & exhibits (m-26)
1/ 6/75	Response of appellees' to motion for transmittal of original papers & exhibits (m-6)
1/23/75	ORDER causing the Clerk of the Superior Court to transmit the orig. file and exhibits to the Clerk of this Court at the time the record on appeal is transmitted pursuant to the designation of record which the Clerk of the Superior Court is directed to file. (ky)
2/ 6/75	Transcript of record (102 pages of transcript) and depositions (RTC) Original file and Exhibits from Superior Court (jacket from trial crt)
3/26/75	Supplemental record (398 pages of transcript) (n)
4/16/75	Supplemental Record No II (42 pages of transcript) (n)
4/18/75	Motion of appellant requesting additional records and to extend time to file brief to June 2. (m-17)
4/21/75	Supplemental record III (13 pages of transcript) (n)
4/24/75	Reply of appellees to motion to extend time to file brief to June 2 and motion requesting additional records. (m-21)
5/21/75	Suggestion of appellant for certification of question to Supreme Court (m-20)

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5/28/75	Motion of appellant to extend time to file brief to 40 days after action on suggestion for certification (m-27)
5/27/75	Order extending appellant's time to file his brief to June 2, and the Office of the Court Reporter shall maintain all notes and tape recordings and make available to counsel for the appellant and the appellees the tape recording of November 7. (Ky)
5/29/75	Clerk's order granting appellant ext. to file brief to 40 days after action on suggestion for certification.
6/ 2/75	Reply of appellees to appellant's suggestion for certification of question to Supreme Court. (m-29)
6/ 2/75	Reply of appellees to appellant's motion for an ext. to 40 days after action on suggestion for certification. (m-30)
6/ 2/75	Opposition of appellant to appellees reply to suggestion for certification of question to Supreme Court (m-2)
6/16/75	Reply of appellant to response of appellees to opposition to reply to suggestion, etc. (m-16)
6/20/75	ORDER denying appellant's suggestion for certification to Supreme Court and directing appellant to file his brief within 40 days of this order. (Judges Reilly and Yeagley)
7/28/75	Petition for hearing en banc. (m-28) (Appellant)
7/30/75	Appellant's Brief. (m-30) List (m-4)
7/31/75	Opposition of appellees to petition for hearing en banc (m-30)

8/26/75	ORDER denying appellant's petition for initial hearing *en banc*. (Judges Reilly, Kelly, Fickling, Kern, Gallagher, Nebeker, Yeagley and Harris)
9/ 2/75	Motion of appellees for summary affirmance (m-27)
9/ 2/75	Motion of appellees to extend time to file brief to 30 days after ruling on motion for summary affirmance (m-27)
9/ 5/75	Reply of appellant to motion for summary affirmance. (m-8)
11/21/75	JUDGMENT affirming order of the trial court, without opinion. (Judges Kelly and Yeagley)
12/ 4/75	Petition of appellant for reconsideration and hearing en banc. (m-3)
12/23/75	ORDER denying appellant's petition for reconsideration and hearing *en banc*. (Judges Reilly, Kelly, Fickling, Kern, Gallagher, Nebeker, Yeagley, Harris and Mack).
12/31/75	MANDATE ISSUED
1/12/76	Notice of appellant of intention to file petition for writ of cert. (m-9)
1/12/76	Motion of appellant for leave to use original record. (m-9)

[SEAL]

by /s/ MARY K. ALLEN
Mary K. Allen, Deputy Clerk

Record filed–

No. 9103

DISTRICT OF COLUMBIA COURT OF APPEALS

January Term, 19 ___

WILLIAM A. BURLESON

Appellant,

v.

ROBERT L. FRIEDLI, AUGUST WOLFF and JOSEPH PASTORE, T/A FRIEDLI, WOLFF & PASTORE

Appellees.

The Clerk will enter my appearance as Counsel for the Appellant

I hereby certify that I am a member of the Bar of this Court.

(Signature) /s/ MICHAEL C. McGOINGS
(Print) /s/ MICHAEL C. McGOINGS
(Address) 1000 Pennsylvania Ave., S.E., Washington, D.C. 20003
(Phone No.) 544-4111

NOTE. Individual and not firm names must be signed.

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Superior Court of the District of Columbia

Civil Division

* * * * *

SETTLEMENT AGREEMENT

This case is settled during trial in open court upon the following terms and conditions, which are interdependent upon each other:

(1) The motion of the defendant to amend the counterclaim, although previously denied, is now granted in order that the assertions contained therein may be finally dealt with by this stipulation of settlement.

(2) As a condition to the settlement required by the defendant, the trial Court expresses as its view that the respective charges made by the private shorthand reporters herein for preparation and delivery of copies of transcripts of depositions is a fair and reasonable one, competitive in the prevailing market and in accord with the pricing policies in effect in the area.

(3) The monies paid into the Registry of the Court are, with the consent of all counsel and the Court, hereby authorized and directed to be paid to counsel for the plaintiff in full settlement of their claims expressed herein. The defendant is therefore released of all claims expressed herein and all claims which might inure against him arising in favor of plaintiffs prior to the date upon which this litigation was filed.

(4) All claims set forth by the defendant against plaintiffs herein, and all other claims which might have arisen

[Exhibit "A"]

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or which did arise in favor of defendant against these plaintiffs prior to the date the last defensive pleading herein was filed, are hereby forever dismissed and discharged with prejudice.

(5) This document constitutes a full and complete accord and satisfaction of all liquidated or unliquidated, vested or inchoate claims existing between the parties.

WILLIAM R. KEARNEY, Esq.

JUDGE

WILLIAM R. BURLESON, Esq.

NOTE: The Court and counsel for both sides initialed the original notes of the Court Reporter of the above.

Superior Court of the District of Columbia

The 16th Day of December, 1974

ROBERT L. FRIEDLI, AUGUST WOLFF, and JOSEPH J. PASTORE t/a FRIEDLI, WOLFF & PASTORE :

vs. : **No. CA-4672-74**

WILLIAM A. BURLESON :

The Clerk of said Court will release to plaintiff's attorney the monies deposited into the Registry of the Court in the above captioned case pursuant to the Settlement Agreement entered into on November 7, 1974, by consent of all counsel and the court.

/s/ EDWARD A. BEARD
Judge Edward A. Beard

/s/ WILLIAM R. KEARNEY
William R. Kearney, Esq.

Attorney for Plaintiffs

[EXHIBIT "A"]

Superior Court of the District of Columbia
Civil Division
Small Claims and Conciliation Branch
613 G Street, N.W.–Third Floor
Washington, D.C. 20001

FRIEDLI, *et al.* vs. Burleson
Plaintiff *Defendant*

No. SC 4285-74

The Clerk of said Court will Please enter my

appearance for Defendant

/s/ JULIAN KARPOFF
Julian Karpoff
1000 Penn. Avenue, S.E.
Washington, D.C. 20003
544-4111

Attorney for Defendant